

219.401

aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

(ii) Planned actions for increasing participation by such firms in future contract awards.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41973, Aug. 6, 1998; 65 FR 63804, Oct. 25, 2000]

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity small business specialist is the primary activity focal point for interface with the SBA.

Subpart 219.5—Set-Asides for Small Business

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services for military construction or family housing projects of \$300,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total \$300,000 or more.

[58 FR 28465, May 13, 1993, as amended at 69 FR 31909, June 8, 2004]

219.502-2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under \$2 million;

(ii) Dredging under \$1 million; and

(iii) Architect-engineer services for military construction or family housing projects of under \$300,000.

[58 FR 28465, May 13, 1993, as amended at 69 FR 31909, June 8, 2004]

219.502-3 Partial set-asides.

(c)(1) If the North American Industry Classification System Industry Subsector of the acquisition is one in which use of a price evaluation adjustment for small disadvantaged business concerns is currently authorized (*see* FAR 19.201(b)), apply the adjustment to the non-set-aside portion.

[65 FR 50149, Aug. 17, 2000]

219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

Subpart 219.6—Certificates of Competency

219.602 Procedures.

219.602-1 Referral.

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

[58 FR 28465, May 13, 1993, as amended at 60 FR 40107, Aug. 7, 1995]

219.602-3 Resolving differences between the agency and the Small Business Administration.

(c)(i) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization, and send the director, through departmental channels—

(A) A request for appeal, summarizing the issues. The request must be sent to arrive within five working days after receipt of the SBA Headquarters' written position.

(B) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within five

Department of Defense

219.703

working days after transmission of the request.

(ii) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

[56 FR 36353, July 31, 1991, as amended at 62 FR 34122, June 24, 1997]

Subpart 219.7—The Small Business Subcontracting Program

219.702 Statutory requirements.

(a) Section 834 of Public Law 101-189, as amended (15 U.S.C. 637 note), requires DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

(i) The test program—

(A) Will be conducted—

(1) From October 1, 1990, through September 30, 2010;

(2) In accordance with the DoD test plan, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans"; and

(3) By the military departments and defense agencies through specifically designated contracting activities; and

(B) Permits contractors selected for participation in the test program by the designated contracting activities to—

(1) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(2) Use the comprehensive plans when performing any DoD contract or subcontract that requires a subcontracting plan.

(ii) During the test period, comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts that require a plan;

(C) Be accepted for use by contractors participating in the test, whether

performing at the prime or subcontract level; and

(D) Not be subject to application of liquidated damages during the period of the test program (Section 402, Pub. L. 101-574).

[56 FR 36353, July 31, 1991, as amended at 60 FR 35668, July 10, 1995; 61 FR 39900, July 31, 1996; 63 FR 14640, Mar. 26, 1998; 64 FR 62987, Nov. 18, 1999; 70 FR 14574, Mar. 23, 2005]

219.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48), are eligible to participate in the program as a result of 10 U.S.C. 2410d and Section 9077 of Pub. L. 102-396 and similar sections in subsequent Defense appropriations acts. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal.

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in 219.001.

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation as to status of—

(i) A historically black college or university or minority institution; or

(ii) A qualified nonprofit agency for the blind or other severely disabled approved by the Committee for Purchase from People Who Are Blind or Severely Disabled.

[57 FR 42630, Sept. 15, 1992, as amended at 58 FR 28465, May 13, 1993; 60 FR 13075, Mar. 10, 1995; 60 FR 41157, Aug. 11, 1995; 60 FR 61596, Nov. 30, 1995; 61 FR 50535, Sept. 26, 1996; 63 FR 11530, Mar. 9, 1998; 63 FR 41974, Aug. 6, 1998; 64 FR 51076, Sept. 21, 1999; 64 FR 62986, Nov. 18, 1999]